

**PLACER COUNTY SUPERIOR COURT**  
**THURSDAY, CIVIL LAW AND MOTION**  
**DEPARTMENT 42**  
**THE HONORABLE CHARLES D. WACHOB**  
**TENTATIVE RULINGS FOR NOVEMBER 5, 2020 AT 8:30 A.M.**

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These are the tentative rulings for the **THURSDAY, NOVEMBER 5, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, NOVEMBER 4, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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**NOTE: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)** More information is available at the court's website: [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).

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Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

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**1. M-CV-0076144 CONAM THE BRIDGES v. HADLEY, JOSEPH**

Defendant Joseph Hadley's Motion for Stay of Execution

Defendant's motion for stay of execution is denied without prejudice as there is no proof of service showing defendant served plaintiff with the ex parte order.

**2. S-CV-0032242 GORMLEY, JAQUELINE v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**3. S-CV-0032348 WILLIAMS, NATALIE v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**4. S-CV-0032349 FRANCIS, AARON v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**5. S-CV-0032518 DEARDORFF-BOATRIGHT, CHARLENE v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**6. S-CV-0032519 MOSQUEDA, OPHELIA v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**7. S-CV-0032550 ROSE, AMY v. GONZALEZ, EFRAIN**

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**8. S-CV-0032762 BRELSFORD, VIRGINIA v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**9. S-CV-0032910 BASILEU, JANET v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**10. S-CV-0032990 RODRIGUEZ, SARAI v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**11. S-CV-0032991 SOMERS, LUCY v. GONZALEZ, EFRAIN**

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**12. S-CV-0032992 MUNOZ, DULCE v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**13. S-CV-0032993 BROADWAY, REBECCA v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**14. S-CV-0032995 ARAKELYAN, GOHAR v. GONZALEZ, EFRAIN**

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**15. S-CV-0032996 ADAME, ULISES v. GONZALEZ, EFRAIN**

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**16. S-CV-0032997 ADAME, BRENDA v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**17. S-CV-0032998 FRANCO, SNA v. GONZALEZ, EFRAIN**

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**18. S-CV-0032999 LAVOW-DAVIS, PATRICIA v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**19. S-CV-0033003 CARBAJAL, PAOLA v. GONZALEZ, EFRAIN**

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**20. S-CV-0033002 REYES, MARIA v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**21. S-CV-0033235 BROWN, STEVIE v. GONZALEZ, EFRAIN**

Plaintiff's motion to enforce settlement is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 in light of defendants' objection to the notice, which plaintiff concedes is insufficient by one day.

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**22. S-CV-0043468 SIMPSON, MELODY v. BANK OF NY MELLON**

Defendant Carrington Mortgage Services, LLC's Motion to Compel Further Responses to Request for Production of Documents and Sanctions

The motion is denied. In the current request, defendant Carrington Mortgage seeks to compel further responses from plaintiff regarding several RPDs based on primarily technical grounds. Plaintiff has responded that supplemental responses have been served on defendant, which are attached to the reply papers. The court has carefully considered plaintiff's supplemental responses

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and, on balance, determines plaintiff provides substantially compliant responses. Since the supplemental responses are substantially sufficient, the court denies the motion and the request for sanctions.

**23. S-CV-0043836 BPX COMM v. SIERRA COLLEGE ESTATES**

Plaintiff's Motion to Enforce Settlement Agreement

The motion is granted pursuant to Code of Civil Procedure section 664.6. Judgment in the amount of \$374,975.00 is entered against defendant Sierra College Estates, LLC. This includes damages in the amount of \$350,000.00; liquidated damages of \$22,475.00 [124 days multiplied by \$181.25 per day]; and \$2,500.00 in attorney's fees.

**24. S-CV-0044668 CLOUSE, CRAIG v. APEX APPRAISAL SERVICES**

Defendant Guild Mortgage Company, LLC's Motion to Compel Further Responses to Request for Production of Documents as to Plaintiff Mary Clouse

The motion is denied. Defendant has not made a sufficient good cause showing to warrant further responses or justification for the plaintiff's objections. (Code of Civil Procedure section 2031.310(b)(1); *Kirkland v. Superior Court (Guess?, Inc.)* (2002) 95 Cal.App.4th 92, 98.)

Defendant Guild Mortgage Company, LLC's Motion to Compel Further Responses to Request for Production of Documents as to Plaintiff Craig Clouse

The motion is denied. Defendant has not made a sufficient good cause showing to warrant further responses or justification for the plaintiff's objections. (Code of Civil Procedure section 2031.310(b)(1); *Kirkland v. Superior Court (Guess?, Inc.)* (2002) 95 Cal.App.4th 92, 98.)

**25. S-CV-0044894 AMER BAR QUARTZ MINING v. WALKER, DANNY**

Defendant William Defouri's Motion to Quash

The motion is denied. In the current request, defendant William Defouri asserts service of the summons in the matter should be quashed and the case dismissed based upon (1) a lack of jurisdiction; (2) inconvenient forum; and (3) the

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doctrine of res judicata. Defendant, however, has not sufficiently shown any of these warrants dismissal of the current action.

First, the court notes defendant's assertions of lack of jurisdiction are actually claims that Humboldt County has exclusive concurrent jurisdiction over the action. This is not the same as a lack of jurisdiction. Exclusive concurrent jurisdiction is a judicial rule of priority. (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-770.) The rule *does not* divest a court of jurisdiction. (*Ibid.*) Further, the application of exclusive concurrent jurisdiction involves abatement of the second action rather than dismissal. (*Id.* at p. 771.) Defendant's assertion of exclusive concurrent jurisdiction does not sufficiently establish a basis for lack of jurisdiction to warrant dismissal of the action.

Second, defendant invokes an improper theory of inconvenient forum. The substance of defendant's argument appears to assert a claim of improper venue rather than inconvenient forum under Code of Civil Procedure sections 418.10 and 410.30. A claim of forum non convenience involves the assertion that a forum outside of California is proper. (Code of Civil Procedure sections 418.10, 410.30; *National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902.) This is compared to a request to change venue, which involves a transfer of an action to another county within California. (Code of Civil Procedure sections 394, 396b, 397.) Defendant does not assert a different state would be a proper forum for the action, which makes dismissal for inconvenient forum inapplicable here.

Finally, defendant contends the action should be denied under the doctrine of res judicata. Specifically, defendant claims that the current action is barred based upon a prior small claims case brought by plaintiff against defendant Danny Walker. Res judicata, or claim preclusion, prohibits a party from relitigating not only causes of action previously adjudicated in prior proceedings but prevents the litigation of issues that could have been litigated in the prior action. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 324; *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1202.) The doctrine applies where (1) the decision in the prior proceeding is final and on the merits; (2) the current proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the prior and current proceedings are the same or are in privity. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1202.) A small claims action may have a preclusive effect under res judicata. (*Pitzen*

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*v. Superior Court* (2004) 120 Cal.App.4th 1374.) Defendant has not made a sufficient showing of any of these elements. Defendant does not provide a final judgment from the small claims action establishing a final determination on the merits. He also fails to sufficiently show the current action stems from the same cause of action adjudicated in the small claims case. Finally, defendant does not establish he is in privity with the parties in the small claims case. For all of the foregoing reasons, the motion is denied.

Defendant William Defouri's Demurrer to the Complaint

Preliminary Matters

As an initial matter, the court declines to consider Exhibits A and B attached to the Floyd declaration. A demurrer challenges the sufficiency of the pleadings, it does not involve the admission of evidence or findings of fact. (*Payne v. Radar* (2008) 167 Cal.App.4th 1569, 1575.)

The court, on its own motion, takes judicial notice of Exhibit C – the complaint filed on February 28, 2019 in Humboldt Superior Court.

Ruling on Demurrer

The demurrer is sustained. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A demurrer may be brought where another action is pending between the same parties on the same cause of action. (Code of Civil Procedure section 430.10(c).) Defendant alleges, among other things, that the current action is subject to the rule of exclusive concurrent jurisdiction. "Under the rule of exclusive concurrent jurisdiction, 'when two [California] superior courts have concurrent jurisdiction over the subject matter and all parties involved in the litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved.' [Citations.] The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits." (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781,

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786-787.) Where the rule is applicable, the second action is subject to abatement and stayed pending conclusion of the first action. (*Id.* at p. 792.) The current action was filed more than a year after the Humboldt County case and involve the same parties. (see Floyd declaration, Exhibit C.) Thus, the current action is subject to abatement.

Disposition

The demurrer is sustained and the current action is stayed pending resolution of Humboldt Superior Court Case No. DR190194, Walker, et al. v. American Bar Quartz Mining Company, et al.

An OSC re status of stay is set for Tuesday, January 26, 2021 at 11:30 a.m. in Department 40.

**26. S-CV-0045002 CROWELL, JASON v. SPECK, CHRISTIAN**

Respondent Christian Speck's Anti-SLAPP Motion

Initially, the parties concede the underlying motion may no longer be ruled upon in light of the order entered on August 7, 2020 terminating the civil harassment restraining order. The only issue remaining is respondent's request for attorneys' fees and costs. Specifically, respondent seeks \$8,095 in attorneys' fees for legal services provided by Wagner Kirman Blaine Klomparens & Youmans firm (Wagner Law Firm) between June 16, 2020 and August 7, 2020. The trial court retains jurisdiction to award attorney's fees and costs related to an anti-SLAPP motion where a dismissal is entered while the motion is pending. (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1456-1457.) The moving party, however, may only recover fees and costs for legal services related to the anti-SLAPP motion. (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383.) Moreover, a self-represented attorney generally may not recover attorney's fees. (*Taheri Law Group v. Evans* (2008) 160 Cal.App.4th 1201, 1207-1211.) Respondent filed the anti-SLAPP motion in propria persona, which means respondent is not entitled to any fees related to legal work he performed in regards to motion. A review of the billing statement from the Wagner Law Firm shows that the \$8,095.00 reflect legal services the firm provided in defending the underlying litigation. The billing statement does not reflect substantive work on the anti-SLAPP motion. Respondent has not made a sufficient showing that he is

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entitled to attorneys' fees related to bringing the anti-SLAPP motion and the request for fees is denied.